

JH

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SANTANA McCREE #B-43655,)	
)	
Plaintiff,)	
)	
v.)	No. 06 C 577
)	
OFFICER POTEPA, et al.,)	
)	
Defendants.)	

MEMORANDUM ORDER

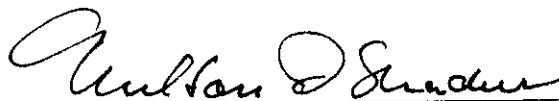
Defendant Correctional Officers Potempa and Seay have filed their responsive pleading to the 42 U.S.C. §1983¹ First Amended Complaint brought against them by Santana McCree ("McCree"), based on the asserted violation of his constitutional rights while he was a detainee at the Cook County Department of Corrections ("County Jail"). Defendants' pleading concludes with an affirmative defense asserting that McCree has failed to exhaust his administrative remedies at the County Jail, thus failing to satisfy the precondition to his lawsuit established by Section 1997e(a).

That nonexhaustion issue, because Congress has decreed that it represents a threshold matter, is obviously one that should be addressed immediately in all events. That is particularly true here, for defendants' affirmative defense is totally inconsistent with their disclaimer in Answer Count II ¶18, where they say they

¹ All further references to Title 42's provisions will simply take the form "Section--."

don't have information sufficient to form a belief as to whether McCree did exhaust his administrative remedies (as he alleges).

Accordingly counsel for both sides are ordered to file, on or before August 25, 2006, statements (verified if possible, and with any available exhibits attached) as to whether and how McCree did or did not exhaust his administrative remedies in the sense required by Section 1997e(a). This Court will then determine whether the issue can be resolved based on those submissions or whether any further proceedings may be required.



Milton I. Shadur
Senior United States District Judge

Date: August 9, 2006